

1 Section 20.18(c) of the Rules states that "[l]icensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY)." The accompanying note to this Rule section specifies that "[o]perators of digital wireless systems must begin complying with the provisions of this paragraph on or before June 30, 2002."

I) Relief Requested

1. The Petitioner requests a limited waiver and a two-month extension of time, up to and including August 30, 2002, within which to comply with the requirements of Section 20.18(c) of the Rules.

II) Background

2. The Petitioner is the licensee of Cellular Radiotelephone Service Station KNKN691, the Frequency Block B cellular system serving the B2 Segment of the Texas 15 - Concho RSA. The digital wireless portion of the Petitioner's system employs Time Division Multiple Access ("TDMA") technology.

3. The Petitioner's cellular system uses Lucent Technologies base station and switching equipment. The necessary hardware and software upgrades to the switch needed to provide service to digital wireless TTY devices were completed prior to June 30, 2002. However, for the system to have digital wireless TTY capability, cell site modifications must be made. Specifically, hardware denominated as High Capacity Controllers must be installed at the affected cell sites, and the cell sites thereafter uploaded with Lucent Cell Site Version 17 or higher software. The necessary High Capacity Controllers were ordered in adequate time to meet the June 30, 2002 deadline; but shipping delays have prevented their arrival and installation. The Petitioner has been advised that the High Capacity Controllers are now scheduled to be shipped on July 12, 2002. Once the High Capacity Controllers are installed, the necessary software will be uploaded; and the system then will have

all hardware and software necessary to process 911 calls originating from digital wireless TTY devices. The Petitioner has in its possession the necessary Lucent Cell Site Version 17 software to upload into the controllers, once they have been delivered and installed.

4. Based upon representations from Lucent Technologies, the Petitioner believes that it will not require a great amount of time to install the controllers and thereafter upload them with the necessary software to achieve digital wireless TTY capability. Assuming that the controllers are in fact shipped on or around July 12, 2002, the Petitioner believes that this process can be completed in substantially less time than the two-month extension requested herein. However, out of an abundance of caution, the Petitioner is requesting a full two months, through August 30, 2002, to complete the equipment installation and software upload process at the cell sites so as to guard against unforeseen delays.

III) Necessity for Waiver

5. In its Fourth Report and Order (CC Docket No. 94-102), FCC 00-436, 15 FCC Rcd. 25216 (2000) ("Fourth R&O"), the Commission established June 30, 2002 as the date by which wireless carriers operating digital systems must be capable of transmitting 911 calls from individuals using TTY devices. Fourth R&O, Para. No. 8. Because circumstances dictate that the Petitioner was unable to meet the June 30, 2002 deadline because of a failure of delivery of certain needed cell site equipment, it is obligated to request a waiver of the requirements of Section 20.18(c) of the Rules.

Under Section 1.3 of the Rules, the Commission may waive the requirement for good cause shown.

6. Section 1.925(b)(3) of the Rules provides that the Commission may grant a waiver request if the applicant can show that "the underlying purpose of the rule(s) would not be served or would be frustrated by [its] application to the instant case, and that grant of the requested waiver would be in the public interest;" or that "in view of unique or unusual factual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."

7. In this case, the underlying purpose of Section 20.18(c) of the Rules is to ensure that persons with hearing or speech disabilities using digital wireless systems can place 911 calls using TTY devices as rapidly as possible once the necessary technology becomes commercially available to the wireless carriers. The Petitioner shares the Commission's goal, but has no reasonable alternative to requesting a waiver. The Petitioner is requesting only an additional two months (through August 30, 2002). In addition, the Petitioner has been diligent in upgrading the digital wireless portion of its system to process 911 calls from TTY devices because the necessary system upgrades are substantially complete at this time.

8. Grant of the requested waiver is also consistent with the public interest since no individual will be harmed if the limited waiver requested herein is granted. At present, digital TTY

handsets are a new product and relatively scarce, virtually eliminating the possibility that a significant portion of the public will be harmed in the short period of time the Petitioner needs to complete the process of making its system digital wireless TTY compliant. While the Petitioner installs and tests its digital TTY solution, analog TTY devices will still work on the Petitioner's system. Recognizing the benefit to the public, the Commission encouraged wireless carriers to continue making analog TTY service available. Fourth R&O, Para. No. 28. Grant of the requested waiver will allow the Petitioner to concentrate its limited resources on completing the implementation of a digital TTY solution at the earliest feasible date while continuing to offer the benefits of analog-based TTY service.

9. The underlying purpose of Section 20.18(c) of the Rules is to require "carriers to achieve TTY/digital compatibility at the earliest possible date;"² and this purpose would be frustrated by application of the regulation's June 30, 2002 deadline in this case. The Commission chose to establish a "date certain" for compliance to provide an incentive "for the industry to maintain TTY access as a priority." Fourth R&O, Para. 7. In this case, the Petitioner has demonstrated that TTY access is one of its priorities. While other wireless carriers have sought (and been granted) comparatively lengthy delays in implementing a digital

² Fourth R&O, Para. 29.

wireless TTY solution,³ the Petitioner's required system upgrades are nearly complete; and the Petitioner is requesting a much shorter extension of time than those granted by the Commission to other wireless carriers. Indeed, the Petitioner is much closer to implementing the upgrades than many large wireless carriers who were granted waivers much longer in duration. See Order (CC Docket No. 94-102), Mimeo DA 02-1540, released June 28, 2002. The Petitioner has been working diligently to upgrade its system to achieve digital TTY compatibility and, therefore, the underlying purpose of Section 20.18(c) of the Rules -- to ensure public safety for the hearing and speech impaired at the earliest possible date - is being served.

10. Application of the June 30, 2002 deadline to the Petitioner would be highly inequitable because of the generous waivers granted to other wireless carriers, as referenced in the preceding paragraph. In its recent June 28, 2002 Order, the Commission granted comparatively generous waivers to carriers who (admittedly for good reasons) had made no progress (or virtually no progress) in implementing a digital wireless TTY solution. Here, the Petitioner is requesting only a two month extension; and its required system upgrades are almost complete. In light of the generous waivers granted to these other wireless carriers, to deny the Petitioner's request would be an abuse of discretion and would also constitute disparate treatment of similarly situated


³ See Order (CC Docket No. 94-102), Mimeo DA 02-1540, released June 28, 2002.

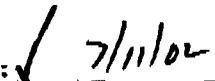
applicants.

WHEREFORE, good cause shown, the Petitioner requests that the instant petition be granted.

Respectfully submitted,
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